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1 keeps in the normal course of business or was it  
2 created for the lawsuit or something else?

3 A This particular record was created for  
4 the lawsuit.

5 Q Is it a summary of amounts that are on  
6 the actual paystubs?

7 A More information appears on the  
8 paystubs than does in this report.

9 Q But it does itemize the gross and net?

10 A That's correct.

11 Q Then if we look at Exhibit 6.  
12 (Handing.)

13 Is that a paystub for Mr. Pena or a  
14 copy?

15 A It's a reproduction of a paystub  
16 generated by PC Payroll for Windows.

17 Q This says it's for pay date August  
18 3rd, 2007, period ending July 29th, '07. Do  
19 you see that?

20 A Yes.

21 Q Do you know if at that time Mr. Pena  
22 was being paid exclusively by check?

23 A Yes.

24 Q He was?

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1 Q Do you know if any of the workers were  
2 ever asked to give a receipt for the cash?

3 A Let me actually back up on that one.  
4 Edison Alvarez actually gave Sam some form of  
5 acknowledgment that he received cash.

6 Q Aside from that, are you aware of any  
7 kind of cash or acknowledgment that workers gave  
8 or were asked to give?

9 A No.

10 Q When you were supervisor, did  
11 employees who worked the same number of hours in  
12 a week get the same amount of cash? For  
13 example, if there were two employees that  
14 worked, say, 72 hours, they both worked 72 hours  
15 in a given week, did they get the same amount of  
16 cash?

17 A I don't know. I wasn't doing payroll  
18 at that time.

19 Q What about when you started doing  
20 payroll?

21 A It depended. Since their pays were  
22 based on net, it depended on how many  
23 deductions. If their nets were the same, their  
24 pay was the same.

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1 A Yes.

2 Q When you were a supervisor, did you  
3 personally hand out the pay to the workers?

4 A Rare occasions, but yes.

5 Q When you were a supervisor, who  
6 normally did that?

7 A Raj.

8 Q On what types of occasions did you do  
9 that? What were the rare occasions,  
10 circumstances?

11 A If Raj was sick, if Raj was on  
12 vacation or if I just happened to be going there  
13 for another reason.

14 Q While you were supervisor, did the  
15 workers -- did any of the workers give a written  
16 receipt for the cash?

17 A Not that I'm aware of, no.

18 Q Do you know if Raj ever gotten written  
19 receipts for cash?

20 A Not that I'm aware of.

21 Q And how about after you took over the  
22 payroll, did workers ever provide written  
23 receipts for cash that they got?

24 A Not that I'm aware of.

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1 Q As part of your job, do you look at or  
2 go through time cards, the time cards  
3 themselves?

4 MS. MEYERS: Objection. When?

5 MR. BERNSTEIN: At any time.

6 A It doesn't really matter, no. Let me  
7 back up. I occasionally glance at them. If I'm  
8 at a location, I might just glance just to make  
9 sure they're being used.

10 Q When you say to make sure they're  
11 being used, you mean that the employees --

12 A Are punching in and out.

13 Q Have you found times when employees  
14 are not punching in and out every time they're  
15 supposed to?

16 A Occasionally. They also refused to  
17 punch in and out for lunch when we attempted to  
18 get them to do that.

19 Q Okay. We'll get to that.

20 A Okay.

21 Q Occasionally, if I understand you  
22 correctly, there are missing punch-ins or  
23 punch-outs that you've seen?

24 A Yes.

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1 Q I should say time cards that you've  
2 seen with a missing punch-in or punch-out time?

3 A Yes.

4 Q When the punch-in or punch out-time is  
5 missing, how, if at all, are the employees'  
6 hours figured for that day?

7 A It was up to Raj. Raj was the one  
8 that knew when they were coming and going. He  
9 was the one that determined what time they got  
10 there and what time they left.

11 Q Now, you said that employees refused  
12 to punch in and out for a lunch break; am I  
13 correct?

14 A Refused might have been a wrong word.

15 Q Okay. They didn't do it?

16 A Unable to do it might be a better  
17 choice of words.

18 Q Tell me what you remember about that.

19 A At some point, I had requested Raj to  
20 get the employees to punch in and out whenever  
21 they left the garage.

22 Q Not just for lunch but whatever?

23 A My choice of words was "whatever," but  
24 it meant lunch, and Raj understood that. And we  
25

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1 Q Was that something you asked Raj to  
2 do?

3 A Yes.

4 Q When did that happen?

5 A It was more than one request, and they  
6 were made sometime in the early part -- early  
7 and mid part of 2004.

8 Q And what caused you to ask Raj to do  
9 that?

10 A The time cards were not reflecting  
11 that they were going out, so I needed -- I  
12 needed that to happen.

13 Q And how do you know that the time  
14 cards were not reflecting that?

15 A Raj told me.

16 Q What did he tell you about that?

17 A That after the first time I had asked  
18 him to get them to punch in and out for when  
19 they left the garage, I asked him if they were  
20 doing it, he said no. After the second time I  
21 asked him to do it, I asked him again, the same  
22 question, he said no.

23 Q Do you know if Raj did anything  
24 besides asking the workers to punch in and out  
25

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1 just couldn't -- could not get them to do it.  
2 They either forgot, they didn't want to do it;  
3 for whatever reason, they did not do it.

4 Q Do you recall when you --

5 MR. BERNSTEIN: Can you repeat the  
6 last answer and question.

7 (Whereupon, the requested portion was  
8 read back by the court reporter: Q, tell me  
9 what you remember about that? A, at some  
10 point I had requested Raj to get the  
11 employees to punch in and out whenever they  
12 left the garage. Q, Not just for lunch but  
13 whatever? A, My choice of words was  
14 'whatever,' but it meant lunch, and Raj  
15 understood that. And we just couldn't --  
16 could not get them to do it. They either  
17 forgot, they didn't want to do it; for  
18 whatever reason, they did not do it.)

19 BY MR. BERNSTEIN:

20 Q How were workers told to punch in and  
21 out for lunch?

22 A Verbally.

23 Q By you or Raj?

24 A By Raj.  
25

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1 for lunch? Did he take any other steps to see  
2 to it that they did that?

3 A I don't know.

4 Q Did you ask him to take any other  
5 steps besides telling the workers to punch in  
6 and out for lunch?

7 A I did tell him that if they don't do  
8 it, they're going to receive reprimands for it.  
9 I don't know whether he told them that or not.

10 Q Do you know if anyone was ever  
11 reprimanded for not punching in and out for  
12 lunch?

13 A No official letter was written.

14 Q How about unofficially?

15 A It wouldn't have come from me, it  
16 would've come from Raj.

17 Q So you don't know one way or the  
18 other?

19 A No.

20 Q Do you know if there are any time  
21 cards that show a worker punching in or out for  
22 a lunch hour?

23 A I don't know.

24 Q Let's look at Exhibit 9. (Handing.)  
25



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A I don't know.

Q I think you said starting in '07, they were paid through their checks for lunch hour?

A Correct.

Q Do you know if any of the workers were told at that point that there was some amount in their checks for lunch hour?

A I don't know.

Q Let's look at Exhibit 10. (Handing.) Do you recognize those pages?

A Yes.

Q What are they?

A They're notification -- they're notification and clarifications so the employees understood that they had to -- that they were going to take a break at their own discretion and that it would be deducted from their -- from their time card.

Q Is this a notice that you prepared?

A Yes.

Q And did you have someone translate it into Spanish for the second paragraph?

A Yes.

Q Who made the translations for you?

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A I think it was my ex-fiance at the time. I don't remember.

Q When did you prepare this?

A Sometime in 2004. Late portion of 2004.

Q What caused you to do that?

A We attempted to have the employees punch in and out on the time cards. But as I said before, they, for whatever reason, they did not do it. So this was the next best thing that they understood what was going on.

Q This was a substitute for their punching in and out?

A Yes.

Q Were you present when any of these were given to the employees to sign?

A No.

Q Do you know who did give them to the employees to sign?

A I gave them to Raj with the assistance of Christian Cherrez, C-H-E-R-R-E-Z, who speaks fluent English and Spanish, with the instructions to explain the policy to those signing it.

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Q Who made the decision to give the employees this type of notice?

A It was my idea to give the employees the notice and Sam okayed it.

Q Had you been told at any time up to when you prepared this notice that employees were not taking meal breaks?

A No.

Q Did anyone ever complain to you or did you learn of any complaints after this point that employees were not taking meal breaks?

A No.

Q Did it ever come to your attention that employees, for whatever reason, were starting to work and working for a period of time before they punched in?

A I'm sorry?

Q Did you ever learn that it was happening, did anyone ever tell you that employees were not punching in right when they started working? That they were asked to wait and punch in after working for some time?

A That they were asked to wait?

Q Or that they did wait?

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A No.

Q Neither of those?

A No.

Q Okay. Did anyone ever complain to you that they had been sent to work at a different garage from the one they were usually assigned to and they were not being paid for the time at the other garage?

A There were isolated incidents where either Raj forgot to put their hours on the sheet or I did not pick it up. But for whatever reason, the hours were missed. Raj would receive the complaint and the hours would be added in the following week.

Q Do you recall any specific instances?

A I don't recall specific instances, but I know it happened once -- more than once with Angelo Pena; and it happened, I believe, once with Franklin Santana. It happened once with one other employee. I just don't remember his name.

Q What records, if any, would show the missed hours being added in at a later time?

A On the following week's paystub, there